

SENATE BILL NO. 66

INTRODUCED BY KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A ~~GENERAL~~ SMALL BUSINESS INVESTMENT TAX CREDIT; PROVIDING THAT A 3 PERCENT CREDIT FOR QUALIFIED INVESTMENTS BY A SMALL BUSINESS IS ALLOWED AGAINST INDIVIDUAL INCOME TAXES OR CORPORATE LICENSE TAXES; LIMITING THE AMOUNT OF INVESTMENT FOR WHICH THE CREDIT MAY BE CLAIMED TO \$100,000 FOR EACH NEW FULL-TIME EMPLOYMENT POSITION LASTING 3 YEARS; REQUIRING THAT THE DEPARTMENT OF REVENUE MAKE ANNUAL REPORTS ON THE CREDIT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE; LIMITING THE INVESTMENT CREDIT IN ANY 1 YEAR TO NO MORE THAN 45 PERCENT OF THE TAXPAYER'S TAX LIABILITY; PROVIDING FOR A 7-YEAR CARRYOVER OF UNUSED INVESTMENT CREDITS IF THE UNDERLYING INVESTMENT REMAINS IN MONTANA; PROVIDING FOR RECAPTURE OF A CREDIT FOR EMPLOYMENT LASTING LESS THAN 3 YEARS; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Investment SMALL BUSINESS INVESTMENT credit. There is allowed an investment tax credit FOR A SMALL BUSINESS against the taxes imposed by 15-30-103 in an amount determined in [section 2].

NEW SECTION. Section 2. Investment SMALL BUSINESS INVESTMENT credit. (1) There is allowed an investment tax credit FOR A SMALL BUSINESS against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122.

(2) The credit is an amount equal to:

(a) the investment credit carryovers; and

(b) the investment credit for the tax year.

(3) An investment qualifies for a credit if:

(a) the investment is depreciable property under sections 46(c) and 48 of the Internal Revenue Code of 1986, 26 U.S.C. 46(c) and 48, as those sections read prior to November 5, 1990, subject to the limitations provided for certain regulated companies in section 46(f) of the Internal Revenue Code of 1986, 26 U.S.C. 46(f),

1 as that section read prior to November 5, 1990, and if the property is not a motor vehicle under 8,000 pounds
2 gross weight;

3 (b) the property was placed in service in Montana; and

4 (c) the property was used, acquired, constructed, reconstructed, erected, or placed into service after
5 December 31, 2005, AND BEFORE JANUARY 1, 2016.

6 (4) THE CREDIT ALLOWED BY THIS SECTION MAY ONLY BE CLAIMED BY A SMALL BUSINESS THAT, FOR THE
7 PURPOSES OF THIS SECTION, IS A SOLE PROPRIETORSHIP, PARTNERSHIP, CORPORATION, PASS-THROUGH ENTITY, OR ANY
8 OTHER TYPE OF BUSINESS ENTITY WITH TOTAL ASSETS OF \$5 MILLION OR LESS IN THE YEAR IN WHICH THE CREDIT IS
9 CLAIMED.

10 ~~(4)(5)~~ (a) The amount of the investment credit for a tax year is 3% of the EMPLOYMENT-ADJUSTED amount
11 of qualified investments made during the tax year. The investment credit allowed for the tax year may not exceed
12 45% of the tax liability of the taxpayer for that year.

13 (B) THE MAXIMUM AMOUNT OF QUALIFIED INVESTMENTS MUST BE ADJUSTED SO THAT IT DOES NOT EXCEED
14 \$100,000 FOR EACH ADDITIONAL FULL-TIME EMPLOYEE OF THE TAXPAYER FOR AN EMPLOYMENT POSITION THAT WILL BE
15 FILLED FOR AT LEAST 3 YEARS. THE EMPLOYEE MUST BE AN EMPLOYEE WHO IS IN ADDITION TO THE NUMBER OF FULL-TIME
16 EMPLOYEES EMPLOYED BY THE TAXPAYER ON THE SAME DAY 1 YEAR PRIOR TO THE DAY ON WHICH THE TAXPAYER APPLIES
17 FOR THE CREDIT AND WHO HAS NOT BEEN COUNTED TO MEET THE EMPLOYMENT REQUIREMENT OF THIS SECTION IN A
18 PREVIOUS YEAR. THE HIRING OF AN EMPLOYEE TO REPLACE AN EMPLOYEE WHO WAS ORIGINALLY HIRED TO MEET THE
19 EMPLOYMENT REQUIREMENT OF THIS SECTION IN A PREVIOUS YEAR DOES NOT QUALIFY AS AN ADDITIONAL EMPLOYEE
20 UNDER THIS SUBSECTION (5)(B).

21 ~~(b)(c)~~ If the sum of investment credit carryovers and the amount of credit for the tax year from the credit
22 allowed by subsection (1) exceeds the limitation imposed by subsection ~~(4)(a)~~ (5)(A) for the current tax year, the
23 excess attributable to the current tax year's credit is an investment credit carryover to the 7 succeeding tax years.
24 The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the
25 oldest available unused credit must be used first. The investment credit carryover may be used only as long as
26 the qualified investment property for which the unused credit was granted remains in Montana.

27 ~~(5)(6)~~ If property for which an investment credit is claimed is used both inside and outside this state,
28 only a portion of the credit is allowed. The credit must be apportioned according to a fraction, the numerator of
29 which is the number of days during the tax year that the property was located in Montana and the denominator
30 of which is the number of days during the tax year that the taxpayer owned the property. The investment credit

1 may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which
2 an investment credit is claimed.

3 ~~(6)(7)(A)~~ The investment credit allowed by this section is subject to recapture as provided for in section
4 50 of the Internal Revenue Code, 26 U.S.C. 50. A recapture of the credit allowed by this section is not required
5 with regard to property ceasing to qualify by reason of an involuntary conversion within the meaning of section
6 1033 of the Internal Revenue Code, 26 U.S.C. 1033.

7 (B) THE INVESTMENT CREDIT ALLOWED BY THIS SECTION IS SUBJECT TO RECAPTURE OF THE CREDIT IF A
8 FULL-TIME POSITION FOR AN EMPLOYEE REQUIRED FOR THE TAXPAYER TO QUALIFY UNDER SUBSECTION (5)(B) ENDS PRIOR
9 TO THE 3-YEAR TERM REQUIRED FOR THE POSITION. THE CREDIT AND ANY CARRYFORWARD OF THE CREDIT MUST BE
10 ADJUSTED BY DISALLOWING THE MAXIMUM \$100,000 INVESTMENT AMOUNT FOR AN EMPLOYMENT POSITION TERMINATED
11 DURING THE FIRST YEAR OF THE CREDIT, DISALLOWING \$66,600 DURING THE SECOND YEAR OF THE CREDIT, AND
12 DISALLOWING \$33,300 DURING THE THIRD YEAR OF THE CREDIT, IRRESPECTIVE OF THE PERCENTAGE OF THE YEAR THAT
13 THE POSITION WAS ACTUALLY FILLED.

14 ~~(7)(8)~~ If a small business corporation, as defined in 15-30-1101, qualifies for the credit provided for in
15 this section, the credit must be attributed to the shareholders based upon the proportion used to report the
16 corporation's income or loss for Montana income tax purposes.

17 ~~(8)(9)~~ An investment credit claimed under this section may be claimed after any other tax credit to which
18 the taxpayer may be entitled.

19
20 NEW SECTION. SECTION 3. REPORT TO COMMITTEE ON SMALL BUSINESS INVESTMENT TAX CREDIT. THE
21 DEPARTMENT SHALL REPORT TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE AT LEAST ONCE EACH YEAR
22 ON THE NUMBER AND TYPE OF TAXPAYERS CLAIMING THE SMALL BUSINESS INVESTMENT TAX CREDIT UNDER [SECTIONS
23 1 AND 2], THE TOTAL AMOUNT OF THE CREDIT CLAIMED, AND THE DEPARTMENT'S COST ASSOCIATED WITH ADMINISTERING
24 THE CREDIT.

25
26 NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an
27 integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

28 (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions
29 of Title 15, chapter 31, apply to [section 2].

30 (3) [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 1, PART 2, AND THE

1 PROVISIONS OF TITLE 15, CHAPTER 1, PART 2, APPLY TO [SECTION 3].

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3 NEW SECTION. **Section 5. Effective date.** [This act] is effective January 1, 2006.

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5 NEW SECTION. **Section 6. Applicability.** [This act] applies to tax years beginning after December
6 31, 2005.

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